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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,254	01/23/2004	Raymond Allan Pickup	075200.0101	8022
7590	09/13/2004		EXAMINER	
Paul R. Morico Baker Botts L.L.P. One Shell Plaza 910 Louisiana Houston, TX 77002-4995			CRANE, DANIEL C	
			ART UNIT	PAPER NUMBER
			3725	
DATE MAILED: 09/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

4W

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/764,254	PICKUP ET AL.	
	Examiner Daniel C Crane	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 and 18-24 is/are rejected.
- 7) Claim(s) 13-17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/23/2004</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## BASIS FOR REJECTIONS

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

## REJECTION OF CLAIMS OVER PRIOR ART

Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamilton (2,218,313). See Figure 3 where the moving member 26 is connected to an anvil 28 and is contacted by a handle 36, which is pivoted to the body 10 at pivot 38.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Heinrich (1,906,854). See Figure 1 where the moving member 11 is actuated by pivoted handle 15.

Claims 1-5 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Tipper (3,224,083. The moving member 29 is actuated by handle 10.

Claims 1-8, 18, 19 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Malagnoux (4,313,333). Figures 5-7 show that the moving member 5 is slidably mounted to the body 2 and driven by pivoted handles 12a, 13a

Claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiffmann (GB 872,228). Figures 1 and 2 show that the anvils 3 and 5 are movable relative to one another and are operated by a pair of pivotable handles 10 that are geared to the moving member 4. The first gear 12 is shown to be connected to one of the handles and a second gear or other gear 12 is shown to be engaged to the moving member 4.

Claims 1-5, 18, 19, 22, 23 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobson (4,807,345). See the Figures where the anvil 30, 32 is movable relative to anvil 28 with the anvil 30, 32 being connected to moving member 54. The moving member 54 is driven by handle 20 that engages follower 60 on moving member 54. The device is made of aluminum. The components are reattachable in a plurality of angular dispositions in that they can be removed, reattached, a multiple number of times.

Claims 1-8, 18-20, 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Gayter (GB 2,169,828). The moving member 20 is slidably mounted to the body 3 and is moved by pivoting handles 6, 7 so as to separate a leading clip 42 from a series of taped clips within the arcuate magazine 19. The anvil is inherently designed to separate the leading clip from the clip magazine. Since the tool is assembled from a plurality of parts to form the integrated tool

Art Unit: 3725

assembly, it is evident that the parts can be disassembled. As to claim 23 the magazine can be reattached in a “plurality of angular dispositions” each time the magazine is disassembled and reassembled.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gayter (GB 2,169,828). While Gayter does not indicate that the anvil 25 is provided with a severing implement to separate the leading magazine from the clip magazine, it is obvious that such would have been contemplated so as to easily separate the leading clip from the clip magazine. Furthermore, such a feature is common in the art. Accordingly, it would have been obvious to the skilled artisan at the time of the invention to have modified Gayter’s anvil 25 by providing severing implement on the anvil 25 so as to cleanly separate each leading clip from the clip magazine as well known in this art.

Claim 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (2,218,313). Fabricating tools of aluminum is well known in the tool art so as to reduce the weight of the tool. Accordingly, such a provision within Hamilton’s tool for the noted motivation would have been obvious to the skilled artisan at the time of the invention.

Claims 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (2,216,313) in view of Littley (738,216). Hamilton illustrates the claimed tool, as treated above, having the capability of crimping clips or metal formations. Hamilton shows that the anvil 28 and moving member 26 is movable by a single movable handle 36, the handle contacting the

moving member by a spigot/slot arrangement 34/32. Littley shows that a pair of movable handles can be arranged to move the moving member by a spigot/slot arrangement 8/9, thus, increasing the force leveraging of the tool. It would have been obvious to the skilled artisan at the time of the invention to have modified Hamilton's singular movable handle by using movable handles as taught by Littley for the noted motivation.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 13-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

#### **RESPONSE BY APPLICANT(S)**

Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

#### **INQUIRIES**

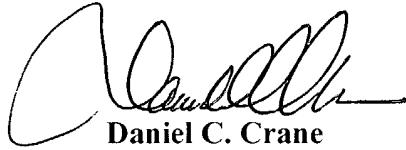
Art Unit: 3725

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(703) 308-1870**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Allen Ostrager, can be reached at **(703) 308-3136**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is **(703) 308-1148**.

Documents related to the instant application may be submitted directly to Group 3700 by facsimile transmission at all times. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Group 3725 Facsimile Center number is **(703) 872-9306**.

DCCrane  
September 8, 2004



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725